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DEPARTMENT OF STATE
WASHINGTON
February 19, 1960

MEMORANDUM FOR THE PRESIDENT

Subject: Transmitting Briefing Paper on the
Juridical Position of Berlin with
Particular Reference to German Traffic
Between Berlin and the Federal Republic

In response to your request, there is enclosed
a briefing paper on the juridical position of Berlin
with particular reference to German traffic between
Berlin and the Federal Republic of Germany.

Christian A. Herter
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Enclosure:

Briefing Paper on
Juridical Position
of Berlin.

JURIDICAL POSITION OF BERLIN WITH PARTICULAR REFERENCE TO
GERMAN TRAFFIC BETWEEN BERLIN AND THE FEDERAL REPUBLIC

The right of the Western occupation powers to freedom of access to Berlin is inherent in their right to occupy Berlin, which in turn derives fundamentally from the total defeat of Germany in World War II. The routes over which the Western forces' right of access was to be exercised (unlimited use of Berlin-Helmstedt Autobahn and three air corridors plus a fixed number of trains daily between Berlin and Helmstedt) were fixed by agreements among the Four Powers. All air traffic, whether Allied or German, is carried by Allied aircraft on the basis of these agreements. Use of the Mittelland Canal between Berlin and the West was originally regulated by a separate agreement between the British and Soviet occupation forces.

All surface traffic between Berlin and the West except that of the Allied official travel is known as "interzonal" traffic. The limited amount of interzonal traffic which was permitted between Berlin and the West prior to the blockade was regulated by directives of the quadripartite Allied Control Authority through a pass system.

The blockade of 1948-49 interrupted all traffic, Allied and interzonal. The quadripartite New York Agreement of 1949 which terminated the blockade and the Paris Foreign Ministers' joint communique which followed are considered not only to have confirmed Allied access rights but also are considered by us to have provided a renewed legal basis for interzonal travel. These agreements lifted all the blockade restrictions and in our view committed the Four Powers to assure the normal functioning of interzonal traffic and communications between Berlin and the West.

Since 1949, interzonal traffic to and from Berlin has been subjected to continuing harassment, but means of adapting to such harassment have been found and the volume of traffic has steadily increased. The Interzonal Trade Agreements concluded annually between the agency acting on behalf of the Federal Republic and the Soviet Zone since 1951 contain clauses providing for the continued free movement of interzonal traffic between Berlin and the West.

Following the blockade, the Soviets gradually transferred their functions with respect to interzonal traffic to the German authorities of their Zone. Today the so-called German Democratic Republic claims sovereign jurisdiction over all interzonal traffic through the Soviet Zone and in fact does control such traffic. While we have maintained our position that interzonal trade remains the responsibility of the Soviet Union appeals of the Western Powers to Soviet responsibility with a view to obtaining elimination of exorbitant tolls imposed on highway traffic in 1955 and waterways traffic in 1958 were fruitless.



The foregoing comments should be read with the understanding that any attempt at a concise statement of the legal basis for transportation and communications between Berlin and the Federal Republic tends to over-simplification and can be misleading, for this basis is derived from a complex of quadripartite documents and discussions which were incomplete and often ambiguous, of agreements which were only partially carried out, and of practices and precedents extending over a long period in which relationships in Germany have profoundly changed. The Western interpretation of the legal situation has been consistently challenged by the Soviet Union and its puppet East German regime, and the latter have frequently been able to force acceptance of their views in practice if not in principle. The lack of a clear and agreed statement or understanding of the legal basis has been one of the more difficult aspects of the Berlin access problem.

